

**ASSEMBLY BILL**

**No. 2417**

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**Introduced by Assembly Member Cook**

February 19, 2010

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An act to amend Section 366.24 of the Welfare and Institutions Code, relating to tribal customary adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 2417, as introduced, Cook. Tribal customary adoption.

Existing law provides for tribal customary adoption as one placement option for Indian children. Existing law requires that, in all cases prior to final approval of the tribal customary adoptive placement, a state and federal criminal background check through the Department of Justice shall be conducted on the prospective tribal customary adoptive parents and on persons over 18 years of age residing in their household. Existing law provides that if the tribe chooses a designee to conduct the home study, the designee shall perform that background check. Existing law requires a tribal designee to be an entity that is authorized to request that information from the Department of Justice. If the tribe chooses to conduct its own home study, the agency that has the placement and care responsibility of the child, shall perform the state and federal criminal background check.

This bill would make technical and clarifying changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 366.24 of the Welfare and Institutions Code is amended to read:

366.24. (a) For purposes of this section, “tribal customary adoption” means adoption by and through the tribal custom, traditions, or law of an Indian child’s tribe. Termination of parental rights is not required to effect the tribal customary adoption.

(b) Whenever an assessment is ordered pursuant to Section 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption.

(c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply:

(1) The child’s tribe or the tribe’s designee shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement.

(A) ~~Where~~ *If* a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child’s tribe. The designee may include a licensed county adoption agency, the State Department of Social Services when it is acting as an adoption agency in counties not served by a county adoption agency, or a California licensed adoption agency. Any tribal designee must be an entity *that is* authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other state’s child abuse and neglect registry, and *must be an entity that is* authorized to request a search for state ~~or~~ and federal level criminal offender records information through the Department of Justice.

(B) The standard for the evaluation of the prospective adoptive parents’ home shall be the prevailing social and cultural standard of the child’s tribe. The home study shall include an evaluation of the background, safety and health information of the adoptive home, including the biological, psychological and social factors of the prospective adoptive parent or parents and an assessment of the commitment, capability and suitability of the prospective adoptive parent or parents to meet the child’s needs.

(2) In all cases, an in-state check of the Child Abuse Central Index and, if necessary, a check of any other state’s child abuse and neglect registry shall be conducted. If the tribe chooses a designee to conduct the home study, the designee shall perform a

1 check of the Child Abuse Central Index pursuant to Section 1522.1  
2 of the Health and Safety Code as it applies to prospective adoptive  
3 parents and persons over 18 years of age residing in their  
4 household. If the tribe conducts its own home study, the agency  
5 that has the placement and care responsibility of the child shall  
6 perform the check.

7 (3) (A) In all cases prior to final approval of the tribal customary  
8 adoptive placement, a state and federal criminal background check  
9 through the Department of Justice shall be conducted on the  
10 prospective tribal customary adoptive parents and ~~of~~ *on* persons  
11 over 18 years of age residing in their household.

12 ~~If~~  
13 (B) *If* the tribe chooses a designee to conduct the home study,  
14 the designee shall perform the state and federal criminal  
15 background ~~checks. check required pursuant to subparagraph (A)~~  
16 *through the Department of Justice prior to final approval of the*  
17 *adoptive placement.*

18 ~~If~~  
19 (C) *If* the tribe conducts its own home study, the *child welfare*  
20 *agency* that has the placement and care responsibility of the child,  
21 shall perform the state and federal criminal background check  
22 *required pursuant to subparagraph (A) through the Department*  
23 *of Justice prior to final approval of the adoptive placement.*

24 ~~An~~  
25 (D) *An* individual who is the subject of ~~the a~~ *a* background check  
26 *conducted pursuant to this paragraph* may be provided, by the  
27 entity performing the background check, *with* a copy of his or her  
28 state or federal level criminal offender record information search  
29 response as provided to that entity by the Department of Justice if  
30 the entity has denied a criminal background clearance based on  
31 this information and the individual makes a written request to the  
32 entity for a copy specifying an address to which it is to be sent.  
33 The state or federal level criminal offender record information  
34 search response shall not be modified or altered from its form or  
35 content as provided by the Department of Justice and shall be  
36 provided to the address specified by the individual in his or her  
37 written request. The entity shall retain a copy of the individual's  
38 written request and the response and date provided.

39 (4) If federal or state law provides that tribes may conduct all  
40 required background checks for prospective adoptive parents, the

1 tribally administered background checks shall satisfy the  
2 requirements of this section, so long as the standards for the  
3 background checks are the same as those applied to all other  
4 prospective adoptive parents in the State of California.

5 (5) Under no circumstances shall final approval be granted for  
6 an adoptive placement in any home if the prospective adoptive  
7 parent or any adult living in the prospective tribal customary  
8 adoptive home has any of the following:

9 (A) A felony conviction for child abuse or neglect, spousal  
10 abuse, crimes against a child, including child pornography, or a  
11 crime involving violence, including rape, sexual assault, or  
12 homicide, but not including other physical assault and battery. For  
13 purposes of this subdivision, crimes involving violence means  
14 those violent crimes contained in clause (i) of subparagraph (A)  
15 and subparagraph (B), or paragraph (1) of, subdivision (g) of  
16 Section 1522 of the Health and Safety Code.

17 (B) A felony conviction that occurred within the last five years  
18 for physical assault, battery, or a drug-related offense.

19 (6) If the tribe identifies tribal customary adoption as the  
20 permanent placement plan for the Indian child, the court may  
21 continue the selection and implementation hearing governed by  
22 Section 366.26 for a period not to exceed 120 days to permit the  
23 tribe to complete the process for tribal customary adoption and  
24 file with the court a tribal customary adoption order evidencing  
25 that a tribal customary adoption has been completed. The tribe  
26 shall file with the court the tribal customary adoption order no less  
27 than 20 days prior to the date set by the court for the continued  
28 selection and implementation hearing. The department shall file  
29 with the court the addendum selection and implementation hearing  
30 court report no less than seven days prior to the date set by the  
31 court for the continued selection and implementation hearing. The  
32 court shall have discretion to grant an additional continuance to  
33 the tribe for filing a tribal customary adoption order up to, but not  
34 exceeding, 60 days. If the child's tribe does not file the tribal  
35 customary adoption order within the designated time period, the  
36 court shall make new findings and orders pursuant to subdivision  
37 (b) of Section 366.26 and this subdivision to determine the best  
38 permanent plan for the child.

39 (7) The child, birth parents, or Indian custodian and the tribal  
40 customary adoptive parents and their counsel, if applicable, may

1 present evidence to the tribe regarding the tribal customary  
2 adoption and the child's best interest.

3 (8) Upon the court affording full faith and credit to the tribal  
4 customary adoption order and the tribe's approval of the home  
5 study, the child shall be eligible for tribal customary adoptive  
6 placement. The agency that has placement and care responsibility  
7 of the child shall be authorized to make a tribal customary adoptive  
8 placement and sign a tribal customary adoptive placement  
9 agreement and, thereafter, shall sign the adoption assistance  
10 agreement pursuant to subdivision (g) of Section 16120. The  
11 prospective adoptive parent or parents desiring to adopt the child  
12 may then file the petition for adoption. The agency shall supervise  
13 the adoptive placement for a period of six months unless either of  
14 the following circumstances exists:

15 (A) The child to be adopted is a foster child of the prospective  
16 adoptive parents whose foster care placement has been supervised  
17 by an agency before the signing of the adoptive placement  
18 agreement in which case the supervisory period may be shortened  
19 by one month for each full month that the child has been in foster  
20 care with the family.

21 (B) The child to be adopted is placed with a relative with whom  
22 they have an established relationship.

23 (9) All licensed public adoption agencies shall cooperate with  
24 and assist the department in devising a plan that will effectuate  
25 the effective and discreet transmission to tribal customary adoptees  
26 or prospective tribal customary adoptive parents of pertinent  
27 medical information reported to the department or the licensed  
28 public adoption agency, upon the request of the person reporting  
29 the medical information.

30 (A) A licensed public adoption agency may not place a child  
31 for tribal customary adoption unless a written report on the child's  
32 medical background and, if available, the medical background on  
33 the child's biological parents, so far as ascertainable, has been  
34 submitted to the prospective tribal customary adoptive parents and  
35 they have acknowledged in writing the receipt of the report.

36 (B) The report on the child's background shall contain all known  
37 diagnostic information, including current medical reports on the  
38 child, psychological evaluations, and scholastic information, as  
39 well as all known information regarding the child's developmental  
40 history.

(10) The tribal customary adoption order shall include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents.

(11) Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the tribal customary adoption.

(12) After the prospective adoptive parent or parents desiring to adopt the child have filed the adoption petition, the agency that has placement, care and responsibility for the child shall submit to the court, a full and final report of the facts of the proposed tribal customary adoption. The requisite elements of the final court report shall be those specified for court reports in the department's regulations governing agency adoptions.

(13) Notwithstanding any other provision of law, after the tribal customary adoption order has been issued and afforded full faith and credit by the state court, the tribal customary adoptive parents shall have all of the rights and privileges afforded to, and are subject to all the duties of, any other adoptive parent or parents pursuant to the laws of this state.

(14) Consistent with Section 366.3, after the tribal customary adoption has been afforded full faith and credit and a final adoption decree has been issued, the court shall terminate its jurisdiction over the Indian child.

(15) Nothing in this section is intended to prevent the transfer of those proceedings to a tribal court where transfer is otherwise permitted under applicable law.

(d) The following disclosure provisions shall apply to tribal customary adoptions:

(1) The petition, agreement, order, report to the court from any investigating agency, and any power of attorney filed in a tribal customary adoption proceeding is not open to inspection by any

1 person other than the parties to the proceeding and their attorneys  
2 and the department, except upon the written authority of the judge  
3 of the juvenile court. A judge may not authorize anyone to inspect  
4 the petition, agreement, order, report to the court from any  
5 investigating agency, and any power of attorney except in  
6 exceptional circumstances and for good cause approaching the  
7 necessitous.

8 (2) Except as otherwise permitted or required by statute, neither  
9 the department nor any licensed adoption agency shall release  
10 information that would identify persons who receive, or have  
11 received, tribal customary adoption services. However, employees  
12 of the department and licensed adoption agencies shall release to  
13 the State Department of Social Services any requested information,  
14 including identifying information, for the purpose of recordkeeping  
15 and monitoring, evaluation, and regulation of the provision of  
16 tribal customary adoption services.

17 (3) The department and any licensed adoption agency may,  
18 upon written authorization for the release of specified information  
19 by the subject of that information, share information regarding a  
20 prospective tribal customary adoptive parent or birth parent with  
21 other social service agencies, including the department and other  
22 licensed adoption agencies, or providers of health care as defined  
23 in Section 56.05 of the Civil Code.

24 (4) Notwithstanding any other law, the department and any other  
25 licensed adoption agency may furnish information relating to a  
26 tribal customary adoption petition or to a child in the custody of  
27 the department or any licensed public adoption agency to the  
28 juvenile court, county welfare department, public welfare agency,  
29 private welfare agency licensed by the department, provider of  
30 foster care services, potential adoptive parents, or provider of  
31 health care as defined in Section 56.05 of the Civil Code, if it is  
32 believed the child's welfare will be promoted thereby.

33 (5) The department and any licensed adoption agency may make  
34 tribal customary adoption case records, including identifying  
35 information, available for research purposes, provided that the  
36 research will not result in the disclosure of the identity of the child  
37 or the parties to the tribal customary adoption to anyone other than  
38 the entity conducting the research.

39 (e) This section shall remain operative only to the extent that  
40 compliance with its provisions does not conflict with federal law

1 as a condition of receiving funding under Title IV-E or the federal  
2 Social Security Act (42 U.S.C. Sec. 670 et seq.).

3 (f) The Judicial Council shall adopt rules of court and necessary  
4 forms required to implement tribal customary adoption as a  
5 permanent plan for dependent Indian children. The Judicial Council  
6 shall study California's tribal customary adoption provisions and  
7 their affects on children, birth parents, adoptive parents, Indian  
8 custodians, tribes, and the court, and shall report all of its findings  
9 to the Legislature on or before January 1, 2013. The report shall  
10 include, but not be limited to, the following:

11 (1) The number of families served and the number of completed  
12 tribal customary adoptions.

13 (2) The length of time it takes to complete a tribal customary  
14 adoption.

15 (3) The challenges faced by social workers, court, and tribes in  
16 completing tribal customary adoptions.

17 (4) The benefits or detriments to Indian children from a tribal  
18 customary adoption.

19 (g) This section shall remain in effect only until January 1, 2014,  
20 and as of that date is repealed, unless a later enacted statute, that  
21 is enacted before January 1, 2014, deletes or extends that date.